**IN THE HIGH COURT AT CALCUTTA**
**CIVIL APPELLATE JURISDICTION**
**Appellate Side**

**Present:**

**The Hon'ble Justice Ajay Kumar Gupta**

**FMA 306 Of 2023**

**China Das & Others**
**Versus**
**The New India Assurance Company Limited & Another**

**For the Appellants** : Ms. Sima Ghosh, Adv.

**For the Ins. Co.** : Mr. Saibalendu Bhowmik, Adv.

**Heard on** : 05.11.2024

**Judgment on** : 18.11.2024

**Ajay Kumar Gupta, J:**

**1.** The instant First Miscellaneous Appeal has been preferred by the appellants/claimants against the Judgment and Award dated 22nd Day of June, 2006 passed by the Learned Judge, Motor Accident

Claims Tribunal, Fast Track, 1st Court, Suri, Birbhum in Motor Accident Claim Case No. 84 of 2003.

**2.** By the said Judgment and Award, the claim application for compensation filed under Section 166 of the Motor Vehicles Act, 1988 by the appellants/claimants was allowed in part ex parte against the OP/Owner but was dismissed on contest against the Insurance Company without cost. The Learned Tribunal Judge has awarded a compensation to the tune of Rs. 1,69,500/- inclusive of the amount awarded under Section 140 of the Motor Vehicles Act, 1988 against the Opposite Party/Owner of the vehicle, who shall pay the compensation by an account payee cheque in the names of the appellants/claimants within two months from the date of Award failing which it shall carry with interest @ 7% per annum from the date of default till realization.

**3.** It was further directed that the claimant-mother shall receive Rs. 30,000/- in the compensation and the balance shall be shared equally by the claimants - son, widow and mother. The amount allocated to the minor son shall be invested in a Fixed Deposit in any scheduled bank until he attains the age of majority.

**4.** The brief fact of the case is that on 7th December, 2002 at about 2.30 pm on the Panagarh – Moregram highway near village Kolitha, P.S. – Nalhati, Birbhum, a motor traffic accident took place in which one Joydev Das was travelling by the vehicle, a Truck bearing registration no. WB 53-6036. The deceased was a member of a cremation party and was seated inside the truck, which was carrying a dead body. Due to the rash and negligent driving on the part of its driver, the said truck was overturned, resulting in the accident. Due to such accident, the victim, Joydev Das sustained grievous injuries and, subsequently, he succumbed to those injuries.

**5.** The appellants/claimants are the mother, wife and son of the deceased. They filed a claim application before the Learned Tribunal under Section 166 of the Motor Vehicles Act, 1988 seeking compensation for pain, agony and loss of dependency. The victim was 37 years old at the time of accident and he was earning Rs. 3,000/- per month through weaving and cultivation.

**6.** During trial, the claimant China Das examined as P.W. 1 and one witness, namely, Prosanta Paramanik examined as P.W. 2. Several documents including First Information Report, Charge Sheet, Seizure List, PM Report were produced before the Learned Tribunal.

After considering the evidence and the documents produced by the parties, the Learned Tribunal finally awarded compensation as aforesaid.

**7.** Being aggrieved by and dissatisfied with the observations made by the Learned Tribunal, the appellants/claimants have filed this instant First Miscellaneous Appeal praying for enhancement of compensation and also for a direction to the Insurance Company to pay the compensation amount to the appellants/claimants. Hence, the Appellants approached before this Hon'ble High Court and the same has come up before this Bench for its disposal.

**SUBMISSIONS ON BEHALF OF THE APPELLANTS/CLAIMANTS:**

**8.** Learned counsel appearing on behalf of the appellants/claimants submitted that the impugned Judgment and Award passed by the Learned Tribunal suffers from error and illegality. Learned Tribunal came to an erroneous conclusion that the victim was gratuitous passenger, as such Insurance Company is not liable to pay the compensation and directed to pay the compensation by the owner of the vehicle though he was not a gratuitous passenger.

**9.** Learned counsel further submitted that the Learned Tribunal should have directed the Insurance Company to pay the compensation and, thereafter, the Insurance Company may be allowed to recover the same from the owner of the offending vehicle bearing registration no. WB 53-6036. The Learned Tribunal has committed an error observing that the victim was a gratuitous passenger though he was with the dead body for the purpose of loading and unloading the dead body for cremation. The Insurance Policy in question was comprehensive policy covering the risk of third party non-fare paying passenger of the said vehicle travelling for the purpose of loading and unloading a dead body. Therefore, the Insurance Company is very much liable to pay the compensation.

**10.** Learned counsel has placed a reliance of a judgment of the Hon'ble High Court of Judicature at Madras passed in the case of ***Divisional Manager, United India Insurance Co. Ltd. Vs. Dhamayanthi and Others***[1] to bolster her contention that the Insurance Company is liable to pay the compensation as the victim was not gratuitous passenger.

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[1] 2013 ACJ 246;

**11.** Learned counsel further submitted that even for the sake of argument, if the Insurance Company is not liable to pay the compensation, the proposition laid down by the Hon'ble Supreme Court again and again that if any terms or conditions of the insurance policy violated by the Insurer, in such a situation, the Insurance Company may be directed to pay the compensation amount first and, thereafter, may be allowed to recover the same from the owner of the offending vehicle. To support of her contention, she has also placed reliance of a judgment passed in the case of ***National Insurance Co. Vs. Swaran Singh & Ors.***[2] wherein the Hon'ble Supreme Court specifically laid down that in case of breach of any terms and conditions of the policy by the owner of the vehicle, the Insurance Company is not liable to pay the compensation but considering the sufficient welfare legislation, the Insurance Company may be directed to pay the compensation to the appellants/claimants and, thereafter, the Insurance Company is at liberty to recover the same from the owner of the offending vehicle. Similarly, ***V. Renganathan and Another v. Branch Manager, United India Insurance Co. Ltd. and Another***[3], wherein the Hon'ble Supreme Court held that the Insurance Company is liable to pay compensation

[2] **AIR 2004 SC 1531;**
[3] **2023 ACJ 623 (SC).**

to the claimants and further entitled to recover the said amount from the owner of the offending vehicle. Furthermore, the Learned Tribunal also not considered the minimum income of the victim to the tune of Rs. 3,000/- per month while allowing compensation amount.

**12.** Finally, the learned counsel appearing on behalf of the appellants/claimants referred two judgments of this Hon'ble High Court with a contention that in both the cases, Co-ordinate Bench of this Hon'ble High Court allowed the compensation considering the minimum income of the victim as Rs. 3000/= per month. Furthermore, awarded Compensation following the guideline laid down by the Constitution Bench in ***National Insurance Company Ltd. Vs. Pranay Sethi & Ors.***[4] and further directed the Insurance Company to pay to the claimants of other cases based on same and identical case and recover the same from the owner of the offending vehicle. The said judgments were passed in the cases of ***Tamali Dasi & Ors. Vs. The New India Assurance Co. Ltd. & Ors.*** passed in ***FMA 646 of 2009*** and ***Bivas Vallya (Minor) & Ors. Vs. The National Insurance Company Ltd. & Anr.*** passed in ***FMA 765 of 2011***. In both the cases, the appellants were granted compensation in the self-same facts and accident occurred on 7th December, 2002

[4] (2017) 16 SCC 680

at about 2.30 pm on the Panagarh – Moregram highway near village Kolitha, P.S. – Nalhati, Birbhum, in which one Joydev Das was also travelling by the vehicle, a Truck bearing registration no. WB 53-6036.

**SUBMISSIONS ON BEHALF OF THE INSURANCE COMPANY:**

**13.** On the other hand, the learned counsel appearing on behalf of the Insurance Company vehemently opposed the prayer of the learned counsel appearing on behalf of the appellants/claimants and further submitted that the Impugned Judgment and Award under challenge passed by the Learned Tribunal is absolutely correct and legal. The Learned Tribunal has correctly come to the conclusion that the deceased was a gratuitous passenger in a goods carriage vehicle at the time of carrying dead body. There were more than seventeen passengers in the said vehicle. It is admitted facts that the accident took place on the date, time and place as claimed by the appellants. However, the deceased Joydev Das as well as other victims were gratuitous passengers in the goods carriage vehicle.

**14.** It is further submitted that the Learned Tribunal correctly assessed the compensation by considering the income of the deceased as Notional Income, when the claimants failed to prove the income of the victim with the cogent documentary evidence. He also submitted that the owner of the offending vehicle has already complied with the provision of Section 140 of the Motor Vehicles Act, 1988 by paying the appellants/claimants initial compensation amounting to Rs. 50,000/-.

**15.** In view of the above facts, the Learned Tribunal has rightly directed the owner of the offending vehicle to pay the compensation amount as awarded by the Learned Tribunal to the appellants/claimants. Therefore, there is no merit in the instant First Miscellaneous Appeal. As such, the same is liable to be dismissed.

**16.** Learned counsel appearing on behalf of the Insurance Company referred five judgments to support of his above contentions are as under: -

***i. New India Assurance Co. Ltd. Vs. Asha Rani and Others[5];***
***ii. National Insurance Company Limited Vs. Rattani and Others[6];***
***iii. National Insurance Co. Ltd. Vs. Anjana Shyam & Ors.[7];***

[5] (2003) 2 SCC 223;
[6] (2009) 2 SCC 75;
[7] 2007 (5) Supreme 856;

***iv. Manager, National Insurance Co. Ltd. Vs. Saju P. Paul and Anr.[8];***
***v. National Insurance Company Limited Vs. Savitri Devi and Others[9].***

**DISCUSSIONS AND CONCLUSIONS OF THIS COURT:**

**17.** Heard the learned counsels for the parties and upon perusal of the materials on record, it appears to this Court that it is admitted fact that the deceased was travelling in a truck bearing registration no. WB 53-6036. Which was carrying the dead body and it can be believed that the deceased was a member of cremation party. The decision of the Hon'ble Madras High Court was placed by the learned counsel for the appellants/claimants, wherein the Hon'ble Madras High Court held in paragraph nos. 17, 18 and 19 as under: -

> *"17. It is a categorical statement of the claimants that the deceased had travelled in a goods vehicle for loading and unloading of a dead body and after unloading such dead body, when the deceased was returning back, the accident took place.*
>
> *18. Exh. R2 is a Goods Carriage Permit produced by the owner according to which the nature of goods that could be carried are 'all types of goods except*

[8] 2013 AIR SCW 609;
[9] (2013) 11 SCC 554.

*prohibited'. Section 2 (13) of the Motor Vehicles Act, 1988 defines the term 'goods' as: "Goods includes livestock, and anything (other than equipment ordinarily used with the vehicle) carried in a vehicle except living persons, but does not include luggage or personal effects carried in a motor car or the personal luggage of a passenger travelling in the vehicle". Therefore, living person is not a 'goods' but a dead person if transported becomes a 'cargo'. There is also no prohibition to transport a dead body in a goods vehicle. There is no law that a dead body should always be carried in an ambulance or a mortuary van.*

*19. Therefore, carrying a dead body in a goods vehicle is also covered within the meaning of a goods vehicle used in carriage of goods and the deceased was a coolie/loadman, for whom there was premium paid for the coverage and, therefore, the insurance company is liable to indemnify the insured."*

**18.** In the instant case, the Learned Tribunal held that the accident took place due to rash and negligent driving on the part of the driver of the offending vehicle i.e. a Truck bearing registration no. WB 53-6036. So, there is no dispute regarding the rash and negligent driving of the driver of the offending vehicle. Therefore, it is proved that the accident took place due to rash and negligent driving of the driver of the offending vehicle. However, it is an admitted fact that the victim and other persons were present in the said truck along with the dead body and they were travelling for the purpose of cremation of the dead body. For that purpose, they were present in the vehicle for loading and unloading of the dead body for the purpose of cremation.

**19.** From the perusal of the aforesaid judgment, it is very clear that living person is not considered as “goods” but dead body, if transported, becomes a “cargo” and there is no prohibition to transport a dead body in a goods vehicle. In addition, there is no law that dead body should always be carried in an ambulance or mortuary van. It is general practice of the Indian society that some dead body to be carried in a goods vehicle for convenience of the family members to accompany their near and dear at the last moment as well as for loading and unloading the dead body for the purpose of cremation. The dead body and other members were present in the vehicle when the accident took place.

**20.** From perusal of the Insurance Policy, it appears the vehicle was insured and there is no dispute that the insurance policy was not valid on the date of accident.

**21.** This Court places reliance of a judgment passed in the case of ***National Insurance Company Ltd. Vs. Baljit Kaur***[10]. In such case, the question which arose for consideration therein was as to whether the words 'any person' shall include a gratuitous passenger despite the amendment made in Section 147 of the Motor Vehicles Act, 1988 by reason of the Motor Vehicles (Amendment) Act, 1994.

**22.** Following ***New India Assurance Co. Ltd. Vs. Asha Rani***[11], it was categorically held: (**Baljit Kaur's** case, SCC p. 8, para 20)

> *"20. It is, therefore, manifest that in spite of the amendment of 1994, the effect of the provision contained in Section 147 with respect to persons other than the owner of the goods or his authorised representative remains the same. Although the owner of the goods or his authorised representative would now be covered by the policy of insurance in respect of a goods vehicle, it was not the intention of the legislature to provide for the liability of the insurer with respect to passengers, especially gratuitous passengers, who were neither contemplated at the time the contract of insurance was entered into, nor was any premium paid to the extent of the benefit of insurance to such category of people."*

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[10] (2004) 2 SCC 1: 2004 SCC (Cri) 370;
[11] (2003) 2 SCC 223: 2003 SCC (Cri) 493.

**23.** Section 147 of the Motor Vehicles Act, 1988 after being amended by the Motor Vehicles (Amendment) Act, 1994 reads as under:

> *"147. Requirements of policies and limits of liability. - (1) In order to comply with the requirements of this Chapter, a policy of insurance must a policy which-*
>
> *(a) * * **
>
> *(b) insures the person or classes of persons specified in the policy to the extent specified in sub-section (2)-*
>
> *(i) against any liability which may be incurred by him in respect of the death of or bodily injury to any person, including owner of the goods or his authorised representative carried in the vehicle or damage to any property of a third party caused by or arising out of the use of the vehicle in a public place;*
>
> *(ii) * * *"*
>
> *(Emphasis supplied)*

**24.** In the light of above discussion and judgements referred by the parties, this court of the opinion that the Judgment and Award passed by the Learned Tribunal is required to be modified with regard to the compensation amount awarded and direction for payment of such compensation amount by the owner of the offending vehicle. The Learned Tribunal assessed the income of the victim as Rs. 15,000/= as his income prior to the accident. Whereas claim of the Appellants were/are that victim income was Rs. 3,000/= per month from weaving and cultivation. It is true that no documentary evidence was brought on record to substantiate their claim. However, it is very difficult to produce document to prove the income of victim after his death especially when he was weaving and cultivating. The Oral evidence cannot be thrown out in absence of rebuttal and/or any contra evidence transpires from the side of Respondents. Claim of Rs.3000/= per month income of the victim prior to accident is minimum because even in the year 2002, a man could have earned Rs. 100/= per day by manual daily works in the field. Therefore, this court can be safely accepted his income as Rs. 3000/- per month. Furthermore, the multiplier would be 15 in view of the age of the victim. In the present case, the age of the deceased was 37 years as per the post mortem report as such he falls in the age group of 36 to 40 years. For that actual multiplier would be 15 in view of judgement pronounced in ***Sarla Verma and Others vs. Delhi Transport Corporation and Another***[12].

[12] (2009) 6 SCC 121

**25.** We should not forget the judgments pronounced by the Hon'ble Supreme Court in ***Pranay Sethi's*** Case and ***Sarla Verma's*** Case. Those judgments are landmark in the field of process of awarding compensation in Motor Traffic Accident cases. In view of aforesaid judgments, the claimants are also entitled to get future prospects and general damages towards loss of estate, funeral expenses and consortium.

**26**. Keeping in mind the above observations, the calculation of compensation would be assessed as follows:

**CALCULATION OF COMPENSATION**

| | |
|---|---|
| **Monthly Income** | **Rs. 3,000/-** |
| **Add: 40% Future Prospect** | **Rs. 1,200/-** |
| **Total Income** | **Rs. 4,200/-** |
| **Annual Income (4,200/- X 12)** | **Rs. 50,400/-** |
| **Multiplier 15 (Rs. 50,400 X 15)** | **Rs. 7,56,000/-** |
| **Less 1/3rd for personal expenses** | **Rs. 2,52,000/-** |

| | |
|---|---|
| **Total Income after deduction** | **Rs. 5,04,000/-** |
| **Add: General Damages Rs. 70,000/= plus additional 10% on interval of three years in view of Pranay Sethi's case.** | **Rs. 84,000/-** |
| **Total compensation** | **Rs. 5,88,000/-** |
| **Less deduction of payment of Rs. 50,000/= under Section 140 of the M.V. Act, 1988** | **Rs. 5,38,000/=** |

**27.** Thus, the appellants/claimants are entitled to get total compensation amount to the tune of Rs. 5,38,000/= (Rupees Five Lakhs Thirty-Eight Thousand) only which shall carry interest @ 6% per annum from the date of filing of the claim application i.e., from 08.04.2003 till final payment.

**28.** The respondent no. 1-Insurance Company is directed to deposit the total compensation amount i.e. 5,38,000/= (Rupees Five Lakhs Thirty-Eight Thousand) only and the interest as indicated above by way of cheques before the Office of Learned Registrar General, High Court, Calcutta within a period of 4 weeks in view of judgments delivered in ***V. Renganathan and Another v. Branch Manager, United India Insurance Co. Ltd. and Another*** and ***National Insurance Co. Vs. Swaran Singh & Ors.*** with a liberty to recover from the owner of the offending vehicle as the terms and conditions of Insurance Policy had been violated by allowing 17 persons in the aforesaid vehicle.

**29.** Learned Registrar General, High Court, Calcutta, upon deposit of the amount and interest on the total awarded compensation amount as indicated above, shall release the amount in favour of the appellants/claimants in equal share to the claimants, upon proper identification and subject to verification of the payment of ad valorem Court fees on the total amount, if not already paid.

**30.** The impugned Judgment and Award of the Learned Tribunal dated 22.06.2006 is modified to the extent only as aforesaid.

**31.** With the above observations, the instant appeal being **FMA 306 of 2023** stands disposed of without order as to costs. Consequently, pending application, if any, is also disposed of.

**32.** Let a copy of this Judgment along with Trial Court Records be sent back to the Learned Tribunal forthwith for information.

**33.** All parties shall act on a server copy of the judgment and order uploaded from the official website of High Court at Calcutta.

**34.** Urgent photostat copy of this Judgment and Order be given to the parties upon compliance of all legal formalities.

**(Ajay Kumar Gupta, J)**

**P. Adak (P.A.)**